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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 426

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION No. 390, A. F. of L.; FRANK PROHL; JOHN J. LUNIN; DANIEL HENRY LEO; ERNEST PALSNER JOHNSON; RUDOLPH J. PAVLAS, JR.; DAVID E. JOHNSON and BERNARD J. HUNNINGHAKE,

Petitioners,

vs.

J. TOM WATSON, Attorney General of the State of Florida, and MAULE INDUSTRIES, INC., a Florida Corporation.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

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INDEX

Subject Index

Page

Petition for Writ of Certiorari..... 1

Summary Statement of Matter Involved..... 2

Statement as to Jurisdiction..... 5

Question Presented 5

Reasons Relied on for Allowance of Writ..... 6

Brief in Support of Petition for Certiorari..... 11

The Opinion of the Court Below..... 11

Jurisdiction 11

Statement of the Case..... 12

Specification of Errors..... 12

Argument 13

I. The state deprives petitioners of rights protected under the First Amendment when it attempts to restrict picketing to the place of business of the employer with whom the dispute exists and flatly prohibits all other picketing regardless of manner or purpose or impact on public..... 13

II. Section 481.09(10) and the injunctive decree issued under it are on their face invalid for vagueness and uncertainty and for being so sweeping as to constitute a previous general restraint of rights protected under the First Amendment 24

Conclusion 27

Statutes Involved

12 Florida Statutes, Section 481.09(10).... 2, 4, 5, 12, 24

Act of Congress, February 13, 1935, Sec. 237(b), 28 U.S.C.A., Sec. 344(b)..... 5

Table of Cases Cited

Page

American Federation of Labor v. Swing,
312 U.S. 321 ..... 6, 7, 14, 15, 23

Bakery & Pastry Drivers v. Wohl,
315 U.S. 769 ..... 8, 16, 17, 24

Bakery Sales Drivers v. Wagshal, 333 U.S. 437 20

Carlson v. California, 310 U.S. 106 22

Carpenters & Joiners of America v. Ritter's Cafe,
315 U.S. 722 ..... 7, 17, 18, 19

Giboney v. Empire Storage & Ice Co., 69 S. Ct. 684 .. 8, 21

In re Blaney, 30 Cal. (2d) 643, 184 P. (2d) 892 26

In re Fortenbury, 16 Calif. (2d) 405 20

Lanzetta v. New Jersey, 306 U.S. 451 26

Milk Wagon Drivers Union v. Meadowmoor Dairies,
312 U. S. 287 ..... 20, 22

Schneider v. State, 308 U.S. 147 7

Thomas v. Collins, 323 U.S. 516 ..... 7, 24

Thornhill v. Alabama, 310 U.S. 88 .... 6, 7, 22, 23, 24, 25

United States v. C.I.O., 335 U.S. 106 ..... 7, 25

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Petitioners,

vs.

J. TOM WATSON, Attorney General of the State of Florida, and MAULE INDUSTRIES, INC., a Florida Corporation.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Florida, rendered on June 21, 1949, rehearing denied July 29, 1949 *(International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 390, A. F. of L., et al., v. J. Tom Watson, Attorney General of the State of Florida, and Maule Industries, Inc.)* Such decision affirmed, without opinion, a decision and decree of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.

Summary Statement of Matter Involved

This case was instituted by the filing of an action for injunction by J. Tom Watson, Attorney General of the State of Florida,[1] against petitioners, seeking to enjoin petitioners from, among other things,[2] alleged violations of Section 481.09, Subsection (10) (12 Florida Statutes) which reads as follows: "It shall be unlawful for any person: . . . (10) To picket beyond the area of the industry within which a labor dispute arises." (The terms "to picket," "area of the industry" and "labor dispute" are not defined.)

Petitioners herein are, respectively, a Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., located in the City of Miami, Florida, and various of its officers. Petitioners were engaged in a labor dispute with respondent Maule Industries, Inc., a building supply company, respecting rights of representation and hours, wages and other conditions of employment. An ex parte temporary injunction was granted enjoining petitioners, among other things, from "picketing or causing to be picketed any construction job, building, building operation, plant or business beyond the area of the industry within which the labor dispute arises; that is to say, at any place, or places, other than the plant or plants of Maule Industries, Inc., and at the entrances thereof . . . " (R. 2). After hearing before a Master, during which the Master

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[1] The employer party to the labor dispute—Maule Industries, Inc.—joined as party plaintiff by appropriate motion at a later stage of the proceedings.

[2] The original complaint sought also to enjoin certain alleged acts of violence, to enjoin striking or picketing in the absence of a majority vote, and to enjoin striking or picketing for an alleged illegal object, *i.e.*, the granting of a union-shop contract contrary to the anti-closed-shop law of Florida. An injunction was granted against the use of violence (from which no appeal was taken), but the proof failed to sustain the other alleged grounds for injunction, and no injunction was issued predicated on those grounds. Thus, the sole injunction involved herein is that against picketing beyond the area of the industry within which the labor dispute arises.

made various findings of fact and conclusions of law, the injunction was made permanent (R. 23).

A summary of the relevant facts, as found by the Master, is as follows: The employer, Maule Industries, Inc., is engaged in Miami and Dade County, Florida, in the building supply business, and, among other things, it supplies contractors with ready-mixed concrete (R. 11). This concrete is prepared in mobile mixing units while en route from the company's plants to the construction job; the final stage of the mixing is done at the construction job (R. 3, 11). A vast majority of the employees employed in driving the mixing trucks of Maule Industries, Inc., having joined the petitioner local union, such petitioner sought representation and a collective bargaining agreement (R. 11). The employer afforded the union tentative recognition, but refused to discuss wages, hours and working conditions, claiming that the union's demands were excessive (R. 12). Thereupon, the union drivers struck and commenced picketing the plants (R. 12), and the employer replaced the striking union drivers with non-union drivers (R. 12). The company's two plants were located in remote and outlying areas of the City of Miami (R. 11). In order effectively to publicize the facts of the dispute between the union and the employer, the union picketed not only the plants themselves but also the mobile trucks at the construction jobs (R. 14).[3] The pickets at the construction sites carried signs reading as follows: "Building material for this job being delivered by non-union drivers for Maule Industries, Inc." (R. 14). The purpose of the picketing was found by the Master to be as follows:

> "The purpose of the described activity on the part of the defendant union in picketing construction sites supplied by Maule Industries was concededly to ad-

[3] At several construction sites, where the picketing induced union construction workers not to work with the unfair cement but where discontinuance of cement pouring would cause irreparable damage, the contractor in question asked the union to cease its picketing and the union acquiesced (R. 6).

> vise customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer." (R. 17).

The picketing at the construction sites where the cement was being mixed and delivered was at all times peaceful (R. 14). Whatever violence occurred took place solely at the plant entrances (R. 13). No contractor sought an injunction against the picketing, the complaint being brought by the Attorney General and Maule Industries, Inc. It was not alleged that the contractors were being induced to commit any unlawful acts (R. 8).

In his conclusions of law the Master specifically construed the term "area of the industry" as contained in Section 481.09(10) to mean the immediate premises of an employer engaged in a dispute. The Master stated in this respect as follows:

> "The language of the statute clearly indicates the intent to limit picketing to the locality adjacent to the place of business involved in a labor controversy. In the present instance the indicated area would seem to consist of the plants where Maule Industries manufactured or produced the concrete. To hold otherwise would render the statute worthless." (R. 19).[4]

Following the Master's report and recommendations, the temporary injunction was made final, enjoining petitioners "from picketing beyond the area of the industry within which the labor dispute, involved in this suit, has heretofore existed, that is to say, within the immediate vicinity of the plants and places of business of Maule Industries, Inc." (R. 23).

The defendants then appealed to the Florida Supreme Court which, on June 21, 1949, affirmed without opinion

[4] Since the trial court "accepted, ratified and confirmed in all particulars" (R. 23) the report and conclusions of the Master without further opinion of its own, and since the Supreme Court affirmed the trial court's decree without opinion or without any attempt to alter or modify in any way the conclusion of the Master concerning the purpose and effect of Section 481.09(10), the above quoted interpretation must stand as the interpretation to be considered in this case.

the decision and decree of the trial court (R. 24, 25). Thereafter, the petitioners applied for a rehearing which was denied on July 29, 1949, without opinion (R. 26).

Petitioners consistently asserted before the trial court (R. 17), and the Florida Supreme Court (R. 24, 25) that the Act in question on which the injunction was predicated, as well as the injunctive decree itself, were on their face and as applied invalid as depriving petitioners of civil rights granted under the First Amendment to the United States Constitution and as protected against interference by the state under the Fourteenth Amendment.

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237(b), 28 U.S.C.A., Section 344(b). This case is one in which the validity of Section 481.09(10) (12 Florida Statutes) is drawn into question upon the ground that such section on its face and as applied and the injunctive decree issued thereunder are repugnant to the Constitution of the United States in various respects as more particularly set forth under "Questions Presented", *infra*. The decision of the Florida Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the courts of Florida when the Supreme Court of that state, on June 21, 1949, rendered a decision upholding the decree of the trial court and on July 29, 1949, denied a rehearing. The constitutional questions as set forth below were raised in every possible stage of the proceeding below.

Question Presented

The following federal question, raised and argued before the Florida Supreme Court, is involved in the present petition for certiorari and review:

Does Section 481.09(10) (12 Florida Statutes), both on its face and as applied, and the injunction issued there-

under impair or prevent the exercise by petitioners of civil rights, particularly of free speech, granted under the First Amendment to the United States Constitution as protected against infringement by the state under the Fourteenth Amendment.

Thus, the issue in this case is whether in a labor dispute between an employer and a union representing his employees the State of Florida can, consistent with the federal Constitution, flatly restrict all picketing, regardless of manner, purpose or impact on the public, to the immediate premises of the employer with whom the labor dispute exists.

Reasons Relied on for Allowance of Writ

This case involves an important question respecting the right of the state to impose restrictions on peaceful picketing, which restrictions have consideration only for the physical location of employer's premises involved in the dispute and have no regard for the manner in which the picketing is conducted or the purpose or object of the picketing or the relationship of such picketing to the labor dispute. In this case a statute of the State of Florida has been applied to prohibit any picketing away from the immediate premises of an employer with whom a labor dispute exists.

Because picketing constitutes the workingman's means of communication and, as such, finds protection under the free speech provisions of the First Amendment, this Court has held in *American Federation of Labor v. Swing,* 312 U.S. 321, and *Thornhill v. Alabama,* 310 U.S. 88, that the state has not an unqualified right to draw a line against picketing where it will. On the other hand, because the purposes of communication may not be served beyond the economic area of the industry in which the labor dispute exists and because picketing may involve more than the right of speech, the majority of this Court has held that the state can confine picketing to the economic area of an industry.

Carpenters & Joiners of America v. Ritter's Cafe, 315 U.S. 722. In the present case the State of Florida has attempted to transmute the economic area of a labor dispute, discussed in the *Ritter* case, to a geographic area so as to broadly outlaw all efforts to publicize the facts of a labor dispute by use of picket signs at any place other than the physical site of the employer's place of business, and this even though that place of business is so isolated that picketing there alone is ineffective as a means of informing the public and fellow union members of the facts of a labor dispute. The injunctive decree herein, like the statute on which it is based, is an extremely broad one having no regard to the manner or purpose of the picketing in question; it is not "narrowly drawn to cover the precise situation giving rise to danger." *Thornhill v. Alabama,* 310 U.S. 88, at 105; cf. *United States v. CIO,* 335 U.S. 106, at 153.

This Court has held that "One is not to have the exercise of liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. State,* 308 U.S. 147. It is further held that the right of picketing involves also the right effectively to picket even though economic injury might thereby result. *Thornhill v. Alabama,* 310 U.S. 88, at 104; cf. *Thomas v. Collins,* 323 U.S. 516, at 527. A decision in the instant case and under the instant facts is necessary not only to affirm such principles, but also to furnish a much needed criterion both to guide the labor movement in its efforts to forward its objectives through peaceful and traditional means and to preclude unwarranted impairments of labor's rights. The limitations on the right of the state to restrict picketing as a means of communication has been indicated only in general terms by prior decisions of this Court; the decision in this case will serve to settle uncertainties existing in a wide field of labor activity.

The pronouncements of this Court in *American Federation of Labor v. Swing, supra, Thornhill v. Alabama, supra,*

and *Bakery & Pastry Drivers v. Wohl,* 315 U.S. 769, particularly in the *Wohl* case where the facts are closely analogous, would indicate that fundamental rights have been transgressed by the legislation and the injunctive decree issued thereunder in this case. While the precise factual situation herein may never have been presented to this Court before, that situation is not unique; on the contrary, it is one constantly recurring what with the widespread and blanket prohibitions on so-called secondary picketing that has come about since the comparatively recent enactment of restrictive labor legislation in some thirty states. Thus, this case will decide an issue of nationwide importance and will have the effect of putting at rest much uncertainty and doubt. It is respectfully submitted that the present case, where the admitted purpose of the picketing was solely to inform the public and organized labor of the facts of a labor dispute, where no element of requiring third parties to commit unlawful acts is involved such as was involved in *Giboney v. Empire Storage & Ice Co.,* 69 S. Ct. 684, and where the picketing clearly involved "no substantive evil of such magnitude as to mark a limit to the right of free speech which the [union] sought to exercise" (*Wohl* case, 315 U.S. at 775), is eminently deserving of this Court's attention—indeed requires intervention if rights basic to our democracy are to be preserved.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Florida, command that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, entitled *"International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local Union No. 390, A. F. of L.; Frank Prohl; John J. Lunin; Daniel Henry Leo; Ernest Palsner Johnson; Rudolph J. Pavlas, Jr.; David E. Johnson and Bernard J. Hunninghake, Appellants, v. J. Tom*

Watson, Attorney General of the State of Florida, and Maule Industries, Inc., a Florida Corporation, Appellees," and that the judgment of the Supreme Court of Florida may be reviewed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION NO. 390, A. F. OF L.; FRANK PROHL; JOHN J. LUNIN; DANIEL HENRY LEO; ERNEST PALSNER JOHNSON; RUDOLPH J. PAVLAS, JR.; DAVID E. JOHNSON and BERNARD J. HUNNINGHAKE,

Petitioners,

vs.

J. TOM WATSON, Attorney General of the State of Florida, and MAULE INDUSTRIES, INC., a Florida Corporation.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion of the Court Below

The opinion of the Florida Supreme Court is reported in 41 Sou. (2d) 341.

Jurisdiction

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

Statement of the Case.

The statement of the case appears in the petition and is incorporated herein by reference. There is no dispute concerning the facts involved, and such facts as are relevant are set forth in such statement and in the arguments that follow.

Specification of Errors.

The Supreme Court of Florida erred in the following respects:

1. In holding that Section 481.09(10) (12 Florida Statutes), as applied in the present case, and the injunctive decree issued thereunder do not deprive petitioners of rights guaranteed under the First Amendment, and as protected against interference by the state under the Fourteenth Amendment.

2. In holding that Section 481.09(10) (12 Florida Statutes) and the injunction issued thereunder in this case are not so vague, broad, indefinite and sweeping so as to constitute a previous general restraint upon the exercise of rights guaranteed under the First Amendment, and as protected against interference by the state under the Fourteenth Amendment.

3. In affirming the decision and decree of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.

ARGUMENT.

I.

THE STATE DEPRIVES PETITIONERS OF RIGHTS PROTECTED UNDER THE FIRST AMENDMENT WHEN IT ATTEMPTS TO RESTRICT PICKETING TO THE PLACE OF BUSINESS OF THE EMPLOYER WITH WHOM THE DISPUTE EXISTS AND FLATLY PROHIBITS ALL OTHER PICKETING REGARDLESS OF MANNER OR PURPOSE OR IMPACT ON PUBLIC.

The principal issue in this case is whether peaceful picketing may constitutionally be confined by legislation to the immediate premises of the employer with whom the dispute is in progress. The principal justification advanced by respondents herein for such restrictions is that any picketing away from the employer's premises adversely affects so-called "neutrals" whose right the state can lawfully protect even to the extent of prohibiting all picketing. It is not conceded in this case, nor does the record show, that there was any attempt to picket a neutral as such, assuming that the contractors, at whose construction jobs the picketing was being conducted, could be classified as neutrals. Here, as we have seen, the dispute was between the employer of concrete mixer truck drivers and a union of those drivers. The picketing was carried on at the place where the non-union drivers were making deliveries and where the concrete was still being mixed. It is true, of course, that the picketing was also carried on at the place where the construction job was located and where the contractors were using the cement purchased from Maule Industries, Inc., and delivered by non-union drivers. However, the facts in this case, unlike the facts in so-called secondary boycott cases, indicate clearly that the contractors themselves were not picketed, termed unfair or otherwise directly involved in the dispute; the picket signs referred merely to the fact that Maule cement was being delivered by non-union drivers.

Since, however, informing employees of the contractors or the contractors that Maule cement was being delivered by non-union drivers may have persuaded employees of the contractors or the contractors not to handle or work with the cement out of sympathy with the strikers' cause, and thereby the contractors, as so-called neutrals, might be affected, nevertheless the flat prohibition contained in the Florida statute and in the injunction issued thereunder cannot stand on any theory of "protecting neutrals." The difficulty with this view is that almost immediately after the Supreme Court first recognized that peaceful picketing was entitled to constitutional protection the constitutional controversy has revolved around the question whether government is empowered to confine the right to peacefully picket to controversies between an employer and his own employees and whether, specifically, an enterprise which engages in business dealings with an employer involving goods which are the subject matter of a labor dispute may be insulated from peaceful picketing on the theory that it is neutral. The claims here made for governmental power are precisely the claims which the Supreme Court has repeatedly rejected.

In *American Federation of Labor v. Swing,* 312 U.S. 321, 325, the Supreme Court held unconstitutional an injunction which, like the injunction in this case, was predicated on the theory "that there can be no "peaceful picketing or peaceful persuasion" in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him." In that case (312 U.S. at 323) "A union engaged in what the record described as beauty work unsuccessfully tried to unionize Swing's beauty parlor. Picketing of the shop followed." An injunction banning the picketing was issued by the state courts on the theory that the dispute involved was really between the union and the non-union employees employed by Swing, that Swing was a "neutral" in this dispute and that the picketing of Swing's beauty parlor was, therefore, merely

officious interference with a business in which the union had no legitimate concern. In reversing the state court, the Supreme Court made it clear that the picketing could not be enjoined on the erroneous assumption that Swing, who employed non-union workers, was a "neutral" in the dispute over unionization. The Court there held (312 U.S. at 326):

> "The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, *whether those limits be defined by statute or by the judicial organ of the state.* A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U.S. 184. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred by concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case." (Emphasis supplied.)

In the present case appellants, in picketing the employer's mobile mixing trucks at the points where they make deliveries to the contractors, have no dispute with the contractors as such, nor do they make demands of them. However, to the extent that employees of the contractors might be persuaded to lend their support to appellants' cause upon learning of the facts of appellants' labor dispute, such contractors may suffer economic injury, although, significantly, these contractors had at no time sought an injunction against such picketing. In the present case we have not even the presence of alleged neutrals

against whom certain demands are being made and against whom picketing is conducted. We have only the bare announcement of the fact that cement is being delivered by non-union drivers, and the sole purpose of the picketing as found by the Master, is "to advise customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer." (R. 17). However, even assuming that picketing is directed against the contractors, and that only the contractors are adversely affected, the decisions of this Court, particularly the decision of this Court in *Bakery & Pastry Drivers v. Wohl,* 315 U.S. 769, are clear that peaceful picketing whose purpose is not to require the alleged third party to commit an unlawful act cannot be enjoined.

In the *Wohl* case a dispute existed between unionized bakery drivers and non-union drivers. After a futile attempt to induce the non-union drivers to join the union, the union undertook to picket the plants of the manufacturing bakers who sold goods to the non-union drivers and the premises of retailers who purchased bread from the non-union drivers for resale. The purpose of the picketing was to induce the manufacturing bakers to cease supplying bread to, and the retailers to cease purchasing bread from, the non-union drivers. The New York Courts prohibited the union from picketing manufacturers and retail bakers who dealt with the non-union drivers.

The facts of the *Wohl* case are closely analogous to the facts of this case. The dispute between the union and non-union drivers there is paralleled by the wage dispute between the union and Maule Industries in this case. There, since the dispute involved working conditions under which bread was transported, the union picketed those enterprises which supplied bread to the non-union drivers and those which purchased bread from them. Here, since the dispute involves working conditions under which Maule products are transported, the union picketed the trucks which trans-

ported Maule cement at the places where the trucks delivered the product. The purpose of the picketing in the *Wohl* case was to induce the manufacturing bakers and retailers to cease dealing with products transported under non-union conditions. The purpose of the picketing here was to inform the public, including the non-union drivers, employees of the contractors, and the contractors using Maule's cement of the facts of the dispute in the hope that they would refrain from handling or using such cement.

In the *Wohl* case the Supreme Court unanimously held that New York could not constitutionally enjoin such picketing. It held that on these facts there was "no substantive evil of such magnitude as to mark a limit to the right of free speech which the [union] sought to exercise" (315 U.S. at 775). The Court went beyond this, however; it pointed out that the economic pressure upon the retailers and suppliers which resulted from the picketing could not be deemed an excuse for refusing to permit the picketing. The Court understood that the retailers and suppliers who traded with the non-union drivers were their allies in the dispute with the union drivers and pointed out that they could not therefore be regarded as "strangers to the issue" (315 U.S. 775).

It may be suggested that the holding in the *Wohl* case is attributable only to the fact that there it was impossible for the union to publicize its legitimate grievances except by picketing the premises of employers who were not immediately involved in the dispute. No such limitation can be read into the *Wohl* case, however, as comparison of that case with the companion case of *Carpenters and Joiners' Union v. Ritter's Cafe*, 315 U.S. 722, makes clear. We discuss that case in relation to the *Wohl* case below. However, even if we assume that such a restrictive reading is proper the rule of the *Wohl* case still protects the picketing here. Here, as in the *Wohl* case, it was impossible for the union effectively to publicize its dispute with Maule to the em-

ployees who were engaged in handling the products involved in the dispute except by picketing Maule at the construction site where it was doing business; the Master expressly found that Maule's plant was remote and inaccessible.

That any such suggested limitation of the holding in the *Wohl* case is completely unsound appears clearly from a comparison of the *Wohl* case with the *Ritter* case which was decided by the Supreme Court on the same day. In the *Ritter* case the Carpenters and Joiners Union was engaged in a labor dispute with a contractor who employed non-union labor on a construction project. Ritter, who had employed the contractor, also owned a cafe about a mile and a half from the building site, at which he employed only union labor. To induce Ritter to require the contractor to employ union labor on the construction site, or to cease dealing with the contractor, the union picketed the cafe.

The Supreme Court held that picketing of the cafe could constitutionally be enjoined. The Court repeatedly emphasized that Ritter's restaurant business, "as a business, has no nexus with the building dispute," (315 U.S. at 726), that it lay "wholly outside the economic context of the real dispute" (ibid.), and that it "industrially has no connection with the dispute" (315 U.S. at 727). Since the cafe did no business whatever with Plaster, the non-union contractor, the cafe was not engaged in the same industry as that in which the dispute arose. The picketing there, unlike the *Wohl* case, and the *instant* case, was not limited to business relations within a single chain of manufacture, distribution and sale to the public, and, therefore, to bar picketing of the cafe did not ignore the "interdependence of economic interest of all engaged in the same industry."

The Court took pains to point out that its holding did not mean that the states were free to confine the area of labor disputes as narrowly as they might deem reasonable.

The Court reaffirmed the holding of the *Wohl* case that the manufacturing bakers and retailers who dealt with the non-union drivers could not constitutionally be insulated by the states from the dispute between the union and the non-union drivers. It said:

> "The dispute there related to the conditions under which bakery products were sold and delivered to retailers. The business of the retailers was therefore directly involved in the dispute. In picketing the retail establishments the union members would only be following the subject matter of their dispute.
>
> "Here we have a different situation. The dispute concerns the labor conditions surrounding the construction of a building by a contractor. Texas has deemed it desirable to insulate from the dispute an establishment which industrially has no connection with the dispute." (*Ritter's* case, 315 U.S. at 727.)

"To deny to the states the power to draw *this* line [the line drawn by Texas]," said the Court, "is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose" (315 U.S. at 728).

Ritter's case thus reaffirms the rule that government cannot constitutionally confine picketing in labor disputes to the plant of the employer primarily involved in the dispute; that, as in the *Wohl* case, picketing must be permitted at the plants of those employers who deal directly with the employer primarily involved. For such enterprises are not, unlike Ritter's Cafe, "neutrals"—having no relation to either the dispute or the industry in which it arose"; they are partisans of the primary employer; their patronage

and services sustain the primary employer in his dispute with the union and enable him to continue to resist the union's legitimate demands. The *Ritter* case goes no further than to hold that those enterprises which neither transport goods to or for, or purchase goods from, the employer involved in a labor dispute, those, in other words, which have "no relation to either the dispute or the industry in which it arose," may be regarded by the states as "neutrals" and shielded from picketing which is directed at influencing the primary dispute.

Respondent urged in the Courts below, and those Courts apparently agreed with them, that the description of employers who transport to retailers or who purchase for resale goods produced under substandard working conditions as "neutrals" in relation to labor disputes arising over such working conditions represents a deliberate legislative judgment on a matter of controversial public policy, and that this judgment should weigh heavily in support of the statute. We submit, on the contrary, that this "judgment is the badge of the statute's infirmity." Because "it is of prime importance that no constitutional freedom, least of all the Bill of Rights, be defeated by insubstantial findings of fact screening reality" *(Milk Wagon Drivers Union v. Meadowmoor Dairies,* 312 U.S. 287, 293), the fiction that all but the primary employer and his own employees are "neutrals" in labor disputes, though framed as a legislative finding, cannot support denial of the constitutional right to peaceful picketing.

To say, as did respondents, that businesses which utilize non-union goods, or which purchase non-union goods for resale are not by that token "directly involved" in a labor dispute with the union, is to ignore the fact noted by the Supreme Court in March, 1948, that "Sale by a merchant of non-union commodities is, no doubt, a traditional source of labor disputes." *Bakery Sales Drivers v. Wagshal,* 333 U.S. 437, at 444. As determined by the Supreme Court of California in *In re Fortenbury,* 16 Calif. (2d) 405, at 407:

"Although the respondent argues that a person secondarily boycotted is an innocent third party caught between the upper and lower millstones of an industrial dispute in which he has no interest, this is clearly not correct. One who sells a product of a merchant or manufacturer engaged in a labor dispute with his employees, inescapably becomes an ally of the employer. He has a direct unity of interest with the one against whom labor's complaint is directed. By providing an outlet for that product, he enables the employer to maintain the working conditions against which labor is protesting. And unless the union is allowed to follow the product to the place where it is sold and to ask the public by peaceful representations to refrain from purchasing it, the workers have no opportunity to tell their story to those whose interest or lack of interest will, in large measure, determine the issues in dispute. *Goldfinger v. Feintuch*, 276 N.Y. 281 [11 N.E. (2d) 910, 116 A.L.R. 477]."

There is and can be no contention that the *Giboney* case *(Giboney v. Empire Storage & Ice Co.*, 69 S. Ct. 684) is applicable in the present case. Not only is the alleged third party not being required to do something which by law he is forbidden to do, but on the contrary he is not asked to do anything; as we have seen, the picketing simply protested the hauling of Maule's cement by non-union drivers and makes no reference to the contractors whatsoever. Thus, the respondents cannot avail themselves of the doctrine in the *Giboney* case.

Respondent argued in the Courts below that peaceful picketing of enterprises which utilize materials produced by an employer engaged in a labor dispute over wages may be prohibited by the state because such picketing tends to impair the right of the employer to carry on his business free from interference of others, and because picketing results in diversion of patronage and services from the employer and thereby disrupts commerce. The argument is that because union workers do not, save in exceptional circumstances, cross a picket line, either to perform serv-

ices or to purchase goods, thereby injuring the picketed enterprise, these economic consequences of picketing render it subject to prohibition by the states.

Even assuming this argument is applicable here where there is no showing of any coercion or that a contractor's employees refused to handle the non-union cement for reasons other than that of sympathy for the strikers once the dispute was made known to them, what this argument comes to is that because of its concern for the economic interests of business enterprises which are involved in labor disputes, the state may prohibit employees from exercising their constitutional rights to peaceful picketing. This argument, like the argument that employers who transport non-union goods to retailers are not parties to a labor dispute, discussed above, has been repeatedly rejected by the Supreme Court.

In the *Meadowmoor* case, 312 U.S. at 293, the Supreme Court referred to peaceful picketing as "the workingman's means of communication." In the *Thornhill* case, 310 U.S. at 103, the Court held that the "right of employees effectively to inform the public [through picketing] of the facts of a labor dispute" is "within that area of free discussion that is guaranteed by the Constitution."

Those who would deny to peaceful picketing the protections of the First Amendment have always argued that peaceful picketing may be banned because its purpose is to persuade persons not to perform services or to purchase merchandise and that the resultant detriment to the business picketed should take precedence over the worker's interests. It was on this theory that Shasta County, California, sought to justify the ban on picketing which was invalidated by the Supreme Court in the *Carlson* case *(Carlson v. California,* 310 U.S. 106, 112). The Court there said:

> "It is true that the ordinance requires proof of a purpose to persuade others not to buy merchandise

> or perform services. Such a purpose could be found in the case of nearly every person engaged in publicizing the facts of a labor dispute; every employee or a member of a union who engaged in such activity in the vicinity of a place of business could be found desirous of accomplishing such objectives; disinterested persons (who might be hired to carry signs) appear to be a possible, but unlikely, exception. In brief, the ordinance . . . proscribes the carrying of signs only if by persons directly interested who approach the vicinity of a labor dispute to convey information about the dispute."

In the *Thornhill* case, 310 U.S. 88, 104, the Supreme Court recognized that picketing, if effective, might have serious economic repercussions upon the picketed enterprise. This, said the Court, did not serve to remove picketing from the orbit of constitutional protection. Picketing, the Court held, "may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests . . . The danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion embodied in Section 3448."

In the *Swing* case, where the state sought to justify the ban on picketing on exactly the same grounds respondent seeks to justify the ban here, i.e., to protect a "neutral" employer against "interference with his business," the Court disposed of the contention by saying (312 U.S. at 326):

> "Communication by such employees (strangers to the employer) of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred *by concern for the economic interests against which*

they are seeking to enlist public opinion than could the utterance protected in *Thornhill's* case." (Emphasis supplied.)

Finally, in the *Wohl* case, *supra,* the Supreme Court held that economic injury resulting to non-union bakery drivers, to manufacturing bakers, and to retailers who purchased bread from the non-union drivers was "no substantial evil of such magnitude as to mark a limit to free speech." (315 U.S. 775.)

The cases discussed above show that the economic consequences of picketing justify its restriction only where picketing is used against an enterprise which, in the light of economic realities, is totally outside the context of the labor dispute. Restrictions upon peaceful picketing within the area of economic conflict which the Supreme Court has held it beyond the power of government to limit can be justified, if at all, only by showing that such picketing gives rise to grave and imminent dangers of substantial evil to the public interest. *Thornhill's* case, *supra; Thomas v. Collins, supra; Wohl* case, *supra.*

II.

SECTION 481.09 (10) AND THE INJUNCTIVE DECREE ISSUED UNDER IT ARE ON THEIR FACE INVALID FOR VAGUENESS AND UNCERTAINTY AND FOR BEING SO SWEEPING AS TO CONSTITUTE A PREVIOUS GENERAL RESTRAINT OF RIGHTS PROTECTED UNDER THE FIRST AMENDMENT.

Section 481.09(10) makes it unlawful for any person "to picket beyond the area of the industry in which the dispute arises. The terms "to picket," "area of the industry" and "labor disputes" are nowhere defined in the Act. It should be noted that the prohibition applies regardless of manner of picketing or the purpose or objective of the picketing; the prohibition is a broad, absolute and unconditional one.

The order for injunctive relief appealed from herein is couched in the statutory language verbatim, there being

added, however, a limitation expressly confining the picketing to the actual place of business of the employer, and this interpretation has been affirmed by the Florida Supreme Court. Outside of this geographic limitation, the ban on picketing contained in the injunctive decree is just as broad and unconditional as is the statute on which it is predicated.

It is submitted that both the statute and the decree come within the proscriptions set forth in *Thornhill's* case, *supra*, against broad and unqualified attempts to ban freedom of communication by picketing as constituting a previous general restraint upon rights of speech and press contained in the First Amendment. The statute here, like the statute in *Thornhill's* case is not "one narrowly drawn to cover the precise situation giving rise to the danger." *Thornhill v. Alabama*, 310 U.S. at 105. The prohibition in this case, both under the statute and under the injunctive decree, does not aim specifically at serious encroachments on these interests [protection of privacy, lives and property of citizens] and does not evidence any such care in balancing these interests against the interest of the community and that of the individual in freedom of discussion on matters of public concern." (*Thornhill's* case, 310 U.S. at 105.) The statute and decree here, like the statute in the *Thornhill* case, "leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute" (310 U.S. at 99).

We have here sweeping and definite restrictions of rights vital to our democracy and given specific protection under the First Amendment. As stated by the concurring Justice in *United States v. C.I.O.*, 335 U.S. 106, "such sweeping and highly indefinite restrictions" are destructive of constitutional guarantees:

> "Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt, and uncertainty of coverage." (335 U.S. 153.)

See also *Lanzetta v. New Jersey,* 306 U.S. 451. Recently, the Supreme Court of California, in *In re Blaney,* 30 Cal. (2d) 643, 184 P. (2d) 892, had to deal with a similar type of prohibition. There, the state had passed a law seeking to restrain so-called "secondary boycotts" by forbidding "any combination or agreement" resulting in refusal of employees to "handle the goods," and by further making unlawful any act or agreement which directly or indirectly causes or induces a violation of the prohibition against secondary boycotts. In striking down the statute as unconstitutional on its face, the Supreme Court of California declared as follows:

> "Regardless of the area to which the concerted labor activity, such as picketing or boycotting may be constitutionally limited, and the facts of the case at bar as above disclosed, the statute here involved cannot stand. It and the restraining order issued pursuant to it are too sweeping, vague and uncertain. It permits the prior censorship of matters undeniably protected by the constitutional guarantee of free speech and press. See *Near v. Minnesota,* 283 U.S. 697 [51 S. Ct. 625, 75 L. Ed. 1357].) . . . Under that provision should a group of employees or a union merely agree to give publicity to their disputes with their employers by radio or newspaper, if that agreement and publicity results in persuading the employees of some other employer to withhold services from their employer, an

injunction will lie. In other words, their freedom to publicize their labor disputes or even to agree to do so is penalized. This result is made even more likely by the provision that any agreement which *indirectly induces* the withholding of services amounts to an unlawful act. (Lab. Code, §1132.) Likewise, under the secondary boycott provision (Lab. Code, §1134(b)) a mere agreement to cause any employee to cease performing services for an employer or to cause an employer not in the dispute to cease dealing with the employer in the dispute for the purpose of bringing pressure upon the latter is denounced. There is also encompassed within its term the mere agreement to publicize a labor dispute with the purpose of persuading other employees to cease dealing with the employer in the dispute. The inducement or persuasion to refrain from dealing may be accomplished merely by advising the dealer of the controversy and requesting him to refrain from dealing, a matter beyond doubt within the realm of the right of free speech. Merely because the object, the intermediate object (the main objective being to correct a grievance against the employer with whom the dispute exists), is to induce third persons (the dealers) to assist in exerting the economic pressure, does not create an unlawful aim. Nor is the communication of the facts of the existence of the dispute to them (the dealers) and persuading them to withhold their business, an unlawful means of furthering the campaign against the employer with whom the controversy exists. A statute so broadly and loosely drawn—which places it within the power of a court to grant injunctive relief, which by its terms may be used to strike down the right to freedom of speech, is a prior restraint upon that right and falls squarely within the rule recently declared by this court."

Conclusion.

It is respectfully submitted that from the foregoing decisions and arguments Section 481.09(10) (12 Florida Stat-

utes) and the injunctive decree issued thereunder in this case are invalid on their face and as applied as impairing the exercise by petitioners of rights guaranteed under the First Amendment.

Respectfully submitted,

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